

REMARKS

Claims 52-102 have been rejected as allegedly being obvious over the combination of U.S. Patent 6,601,040 to Kolls (hereinafter “Kolls”), U.S. Patent No. 5,163,010 to Klein et al. (hereinafter “Klein”), and U.S. Patent No. 7,099,740 to Bartholomew et al. (hereinafter “Bartholomew”). Applicant respectfully traverses this rejection.

Applicant respectfully submits that none of the cited references teach or suggest a central computer to remotely manage inventories of a plurality of vending devices over a communications network and to schedule delivery to replace vended hair care or cosmetic products or to replace depleted base stock colors, as required in pending amended claims 52-102.

Kolls relates to managing usage times, device usage count, printed output, copies, printed pages, and fax transmissions. Specifically, Kolls relates to charging for usage time of online services, access to program applications, or databases, and charging for electronic commerce transactions. That is, Kolls relates to a vending device for vending services. Kolls lists the following vending equipment: copiers, phones (public, private, cellular), facsimile machines, printers, data-ports, laptop print stations, notebook computers, palmtop computers (PALM PILOT), microfiche devices, projectors, scanners, cameras, modems, communication access, personal data assistants (PDA's), and pagers. (*See, e.g.*, Kolls at abstract; col. 6, lines 61-62). At best, in order for Kolls to relate to the claimed invention, Kolls vending device should be capable of vending products, e.g., cell phones, PDAs, pagers, printers, etc. But, Kolls merely describes managing the following exemplary services or usage:

- Manage PC access/usage (col. 7, lines 11-25; col. 8, lines 36-44);
- Manage interactive advertising (col. 7, lines 42-45; col. 24, lines 36-43);

- Manage cell phone access/usage (col. 9, lines 4-20);
- Manage pager usage (col. 9, lines 21-26);
- Manage PDA usage (col. 9, lines 27-35);
- Manage usage of printer, PC, projector, fax machine and copier (col. 10, lines 57-60);
- Manage telephone line access/usage (col. 11, lines 36-49); and
- Manage money transfer (col. 32, lines 25-31).

Since Kolls manages usage times on their various vending devices, Kolls cannot possibly teach managing inventories of products and scheduling delivery to replace vended hair care or cosmetic products or replace depleted base stock colors, as required in the pending claims. That is, there is no “vended products” to replace with Kolls vending devices which merely vends “services.”

To imbue one of ordinary skill in the art with knowledge of the present invention, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim of the insidious effect of hindsight syndrome, wherein that which only the inventor taught is used against the teacher.” W.L. Gore & Assoc. v. Garlock, Inc., 721 F.2d 1540, 1553 (Fed. Cir. 1983). The prior must to be judged based on a full and fair consideration of what that art teaches, not by using Applicant’s invention as a blueprint for gathering various bits and modifying the pieces in an attempt to reconstruct applicant’s invention.

At best, Kolls system describes detecting “out-of-paper” error condition when a service vending device runs out of paper (e.g., printers and copiers). When “out-of-paper” error condition is detected, Kolls system can “‘open the supply door’ and prompt the user to restock the paper supply.” (Kolls at col. 25, lines 49-50). That is, Kolls teaches away from the claimed invention because the operator must restock the paper in the copier. As explained in previously filed amendments, the claimed vending device eliminates the responsibility associated with maintaining the vending device, such as restocking, from the operator.

Further, as admitted by the Examiner, Klein and Bartholomew do not teach or suggests central computer to remotely manage inventories of a plurality of vending devices over a communications network and to schedule delivery to replace vended hair care or cosmetic products or to replace depleted base stock colors, as required in pending amended claims 52-102. Hence, the addition of Klein and Bartholomew do not cure aforementioned deficiencies in Kolls.

Of course, to establish a *prima facie* case of obviousness, three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not be based on the Applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991); MPEP 2143. Here, the Examiner has failed to establish a *prima facie* case of obviousness because the combination of Kolls, Klein and Bartholomew fails to teach or suggest all the claim limitations of the pending claims and in fact, the combination teaches away from the claimed invention.

In view of the above, Applicant believes that the pending application is in condition for allowance and requests that the Examiner's rejections be reconsidered and withdrawn.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 50-0624, under Order No. NY-WELLA-204-US (10207602) from which the undersigned is authorized to draw.

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Respectfully submitted,

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